

AN

EXPOSITION

OF THE

HAIR POWDER ACT,

SETTING FORTH ITS

LEGAL OPERATION;

WITH A FULL ABSTRACT OF THE ACT:

BY A BARRISTER.

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EXHIBITION

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IN the present unexampled demand for supplies, no one can be surpris'd, that the Minister of Finance should find the raising of them difficult in itself, and ungracious to many. The prevailing system of all governments throughout Europe has so extended public expenditures of every denomination, as to have rendered *taxation* a science and one of the most desirable attainments of the accomplished statesman. In our Constitution the House of Commons* is so jealous of the prerogative or right of raising the necessary levies, that they claim the exclusive

* "It is the ancient indisputable privilege and right of the House of Commons, that all grants of subsidies or parliamentary aids do begin in their house, and are first bestowed by them: although their grants are not effectual to all intents and purposes, untill they have the assent of the other two branches of the legislature." Blackst. Com. lib. i. cap. 2, p. 169. 4to edition.

power of imposing the burthen upon the people, as well as that of regulating the manner and framing the bills, by which the collection of the taxes and their application are ascertained. The Commons cannot prevent the House of Lords from rejecting a money bill, although they will not permit them to make the least alteration or amendment in it. The usage of Parliament is, that if the Lords send back a money-bill with the slightest alteration or amendment, it is literally *kicked out* by the Commons. If the Commons approve of the alterations or amendments made by the Lords, they bring in a new bill with such alterations or amendments. By these means the Commons assert their exclusive claim of taxing the people, and the Lords keep up their pretensions to an equal right with the Commons to impose taxes upon the nation. It appears evident by the words of the statute *De tallagio non concedendo*, that the Legislature of that day neither gave nor intended to give any exclusive right of imposing taxes to the Commons in preference to the Lords. That statute * applies equally and indiscriminately to both. "No
 "tallage nor aid shall be taken or levied by Us
 "or our Heirs in our realm without the good-
 "will and assent of Archbishops Bishops Earls
 "Barons Knights Burgeffes and other Free-
 "men of the land." Now whatever may be the right of either House of Parliament, with immediate reference to their parliamentary duty and privilege, it little concerns the public at large. Each House is the judge and arbiter of

* 34 Edw. I.

its own rights and privileges ; and Parliament has its own peculiar law, called *Lex et consuetudo Parliamenti*, The law and usage of Parliament. When in the 31 Hen. VI. (A. D. 1452) the judges were consulted upon a question of this sort, the lord chief justice Sir John Fortescue declared in the name of his brethren, that they ought not to make answer to that question : for that it had been used aforetime, that the judges should not in any wise determine the privileges of the High Court of Parliament : and Lord Coke says, * “ The High Court of Parliament stands upon its own laws and customs,” *Suis propriis legibus & consuetudinibus subsistit.*

As an Act of the British Parliament is the highest act of human authority, to which every British subject owes submission and obedience, the first thing to ascertain his practical duty is to consider, whether the Act be complete in its essential component parts, that is, whether it have received the threefold assent; for † “ there “ is no Act of Parliament, says Lord Coke, but “ must have the consent of the Lords, the Com- “ mons, and the royal assent of the King.”

To some persons it may appear unreasonable, that they should become bounden by an Act of Parliament from a particular day, when they have received no formal notice of its having passed into a law, or been supplied with a copy of the act, from which they may be apprised of its contents, and consequently learn the extent

* 4th Inst. 15.

† 4th Inst. p. 25.

of their obligation and duty. We find from the form of an ancient writ to the sheriff in the 10th year of King Ed. III. (A. D. 1336), that it was a part of his office to proclaim Acts of Parliament (he did at his county court, where he kept the transcripts or copies) throughout his bailiwick, and to see to the observance of them *. Now although this usage then generally prevailed, we learn from a very solemn decision only twenty-nine years after this time, viz. in the 39th of Ed. III. that this promulgation of the statutes (reasonable and proper as it appears) was not necessarily required by the common law. The reasons, which were then delivered by the Court against the necessity of such promulgation, are at present much stronger by the general diffusion of learning and facility of circulating the written law in print †, than they were when few could read, and but one single copy of each act was to be had in each bailiwick: for evidently there is proportionably less reason for promulgating a written law at present, than there then was, by how much more easily and quickly the knowledge of the law may be now communicated to those, who are to observe it. ‡ In a case of *Præmunire* upon the statute of provisions, 27. Ed. III. against the bishop of Chichester, his counsel objected against the statute, as never

* *Edwardus Dei Gratiâ &c. Et ideo tibi præcipimus, quod statuta illa & omnes articulos in eisdem contentos in singulis locis in balivâ tuâ tam infra libertates, quam extra, ubi expedire videris publicè proclamari & firmiter teneri & observari facias. Teste &c. Vid. Sir E. Coke's 4th Inst. 26.*

† The art of Printing was invented in 1441.

‡ Year Booke, 39 Ed. III. Term. Pasch.

having been published or proclaimed in the county. To which objection, Sir Robert Thorpe chief justice answered: "Although proclamation
 " be not made in the county, every one is
 " bounden to take notice of that, which is done
 " in Parliament; for as soon as the Parliament
 " hath concluded any thing, the law intendeth
 " that every person hath notice thereof, for the
 " Parliament representeth the body of the whole
 " realm; and therefore it is not requisite, that
 " any proclamation be made, seeing the statute
 " took effect before." In the case of the Hair
 Powder Act the 30th day of April last, which
 was the day, on which it received the royal assent
 gave commencement to its operation as a law
 at Kirkwall in the Orkneys, at Truro in Corn-
 wall, and at Westminster in the county of Mid-
 dlesex.

The law then having passed, and requiring no
 other promulgation, than what it has already re-
 ceived to give it full force and efficacy upon
 every British subject, the subject of my enquiry
 will be to ascertain the duties and obligations,
 which it imposes. What then is the legal opera-
 tion of this statute? It either does or may affect
 upwards of twelve millions of persons. It be-
 comes therefore highly important to individuals
 to know the positive injunctions of the law, that
 they may comply with them, as well as the
 faults neglects or offences against the law, to
 which penalties are annexed, that they may
 avoid them. Lord Coke, than whom no man
 better understood the spirit of the law of Eng-
 land,

land, says *, “ All laws, especially penal, ought
 “ to be so plainly and perspicuously penned, as
 “ every member of both Houses may under-
 “ stand the same, and according to his know-
 “ ledge and conscience give his voice.” What
 this great lawyer so truly said concerning the
 legislators, who frame the law, is equally forcible
 and applicable to all the observers of it
 when once enacted. To enforce his own obser-
 vation he quotes a very apposite description or
 enumeration of the proper qualities of all such
 laws †. “ But let the law be honourable just
 “ practicable according to the nature and cus-
 “ tom of the country; adapted to the times,
 “ necessary and useful. Let it also be clear,
 “ lest through its obscurity the unguarded be
 “ taken in by the captious; calculated for no
 “ private advantage, but for the common interest
 “ of all the citizens: therefore in framing them,
 “ these things are to be observed, because,
 “ when the laws are once enacted, we are not
 “ at liberty to judge about them, but we must
 “ then judge according to them.” In conform-
 ity with these rules and directions of Lord
 Coke, I shall say nothing of the views motives

* 4th Inst. 42.

† Isidor. 2 Etymol. “ Erit autem lex honesta iusta possi-
 bilis secundum naturam & secundum consuetudinem patriæ,
 “ temporique conveniens necessaria & utilis, manifesta quo-
 “ que, ne aliquid per obscuritatem incautum captione con-
 “ tradat, nullo privato commodo, sed pro communi civium
 “ utilitate conscripta: ideo in ipsâ constitutione illa confi-
 “ deranda sunt, quia cum leges institutæ fuerint, non erit
 “ liberum arbitrium de ipsis judicare, sed oportebit judicare
 “ secundum ipsas.”

prudence policy or safety of passing the law; but since it is enacted, shall according to my slender ability endeavour to point out to my countrymen, how they are to square their actions according to it.

Sir Matthew Hale one of the most constitutional lawyers this country ever boasted of, has said*, "that the common law and the judges of the courts of common law have the exposition of statutes or acts of parliament;" and he has in the same paragraph added within an aparenthesis these emphatic words *next under the King and his Parliament*. This he seems to have done to rectify or obviate an error of another respectable writer upon the exposition of statutes, who seemed to set up a judicial interpretation of a statute above, or even to the exclusion of a parliamentary explanation. "† Seeing the Lower House are by election, and then by the law civil, the assembly of parliament being ended, *functi sunt officio* (their duty is ended) and their authority is returned to the electors so clearly, that if they were altogether assembled again for interpretation by a voluntary meeting *eorum non esset interpretari* (it would not be their business to interpret). For the sages of the law, whose wits are exercised in such matters, have the interpretation in their hands, and their authority no man taketh to control: wherefore their power is very great and high and we seek

* Hist. of the Common Law of England, l. i. c. 2.

† Treatise concerning Statutes, &c. by Sir Christopher Hatton late Chancellor, c. 4.

" these

"these interpretations as oracles from their
"mouths."

It is evident, that a judicial interpretation or exposition of a statute can only be given in some cause, which depends upon such interpretation. To prevent prosecutions upon this statute is the very reason of my hazarding this exposition or comment upon it. For however it may militate against the fashion or spirit of the present day, it is not therefore the less true, that the multiplicity of our penal statutes is a real and heavy grievance upon the people of this country. A truly respectable living authority, the learned observer on the ancient statutes, has very strongly expressed his sentiments upon this subject *. Inasmuch as antidote is preferable to remedy, it must be more satisfactory to my countrymen to learn the true sense and operation of this statute from a previous exposition of it by way of comment, than from judicial

* Observations on the more ancient Statutes, &c. by the Hon. Daines Barrington. Appendix, p. 501 of the 3d Edit. "The inconvenience and vexations of these prosecutions (upon penal statutes) was severely felt in the reign of James I, as Beaumont in one of his plays speaking of a justice of the peace says, *Take away his statutes, the Devil hath possessed him in the likeness of penal laws.* Doctor Donne also a cotemporary writer seems to have had the dread of these statutes continually before him :

"But my words none draws

"Within the vast reach of the huge statute's jaws."

SATYR II.

"And again,

"And methought I saw

"One of our giant statutes ope his jaw

"To suck me in."

SATYR IV.

inter-

interpretations made of it in the Court of Exchequer, whither by the twenty-fifth article of the Act prosecutions upon it are to be carried : especially as it is generally understood, that in our Court of Exchequer at Westminster (I know not whether the same laudable practice hold in Scotland) the common jurymen are paid by the Crown much more liberally when they find for the Crown, than they are in other Courts.

It would be frivolous to prove what every Englishman knows, that our judges of common law are obliged to judge after precedents, wherever they exist. In proceeding therefore to discover the true construction of the *Hair Powder* Act, I find it necessary to state, that in Heydon's case * " it was resolved unanimously by " Sir Roger Manhood, and the other Barons of " the Exchequer, That for the sure and true interpretation of all statutes in general (be they " penal or beneficial restrictive or enlarging of " the common law), four things are to be discerned and considered.

" 1st, What was the common law before the " making of the Act ?

" 2d, What was the mischief and defect for " which the common law did not provide ?

" 3d, What remedy the parliament hath resolved and appointed to cure the disease of " the common wealth ?

* 3 Rep. 7.

" And

“ And 4th, The true reason and remedy :
 “ and then the office of all the judges is always to
 “ make such construction as shall suppress the mis-
 “ chief and advance the remedy ; and to sup-
 “ press subtle inventions and evasions for con-
 “ tinuance of the mischief and *pro privato*
 “ *commodo*, and to add force and life to the
 “ cure and remedy according to the true intent
 “ of the makers of the Act *pro bono publico*.”

As in this pursuit I wish to advance nothing but upon the strength of undoubted authority, I had rather expose myself to the imputation of prolixity than of obscurity, of diffidence than of presumption. It may not then be improper to note, that in our law every statute is deemed *penal*, that gives forfeiture of money, as well as such as enjoin corporal pain or disability ; and that every statute, which is *penal* and goes in *derogation of the common law* shall be taken strictly*.

The first of the four rules of construction requires but little to be said upon it in the present enquiry : for it scarcely needs to be asserted, that by common law (I had almost said by the law of nature) any man woman or child rich or poor may use or wear hair-powder either for comfort conveniency dress or ornament. The intent of this statute is not to take away disapprove of or condemn the usage, for the very efficiency of the Act is founded upon the continuance and extension of the usage : the practice therefore is not only declared *lawful* by the Act,

* Keilway, Mich. 22 Hen. VII. p. 96.

but

but encouragement is thereby given to promote the end of the law, which we learn from the preamble is, *to defray his Majesty's public expenses, and make such permanent addition to the public revenue, as shall be adequate to the increased charge occasioned by any loan or stock to be created by virtue of any act or acts, for that purpose to be passed in this session of parliament.* Now this end can only be effectually attained, by extending the effects of the Act; or rendering as many persons as possible *liable* to it. This therefore is the first immediate object of our enquiry; and it behoves us to give some previous attention to the principles, upon which the operation of the statute depends. This Act is not *remedial*, for it undertakes to correct no abuses. It is neither *declaratory* nor *explanatory*, as no pre-existing law affected the subject: but it is *introductory* of a new law: and we are enquiring what this *new* law is.

Although the *civil magistrate* * cannot take away any of those *natural inherent rights of man*, which cannot be surrendered to the Society, such as freedom of thought, liberty of conscience, &c. yet he may so control any of the indifferent actions of his subjects, as to annex to the performance of them certain conditions beneficial or advantageous to the state: for as the

* This is a collective term by which statists political and other writers express the person or persons, in whom the sovereign and absolute *civil* or *temporal* power of the state, or nation is vested. With us it means the King, Lords and Commons; in Spain it means the King alone; at Venice the Doge and Senate, &c.

end of his power is to promote the welfare of the state, he may lawfully do whatever in his discretion he shall judge conducive to that end. In doing this he may appear to those, who consider slightly, or argue wrongly, to break in sometimes upon that liberty, which many erroneously think to be out of the control of the *civil magistrate*. Thus for example, when the * 10th Ed. III. Stat. III. (A. D. 1336) forbade any man or woman of any degree, who could not spend £.100 per annum to wear furs, under the penalty of forfeiting the furs, and arbitrary punishment at the will of the King; a person, who during the operation of that act, which ceased A. D. 1604 should have killed a martin-cat fox or ferret and have lined or trimmed his waistcoat with their fur, might have argued, that in doing this, he committed no offence either against God or man, and therefore that he could not be hindered from, and much less punished for doing it by the civil magistrate. The ground of all sumptuary laws gives a full answer to such observations: *viz.* the expediency of restraining some individuals from doing certain lawful things for the benefit of the whole society. We must presume the legislature of that day to have found by experience, that the vanity of apparel occasioned neglect of and inattention to the substantial comforts and care of families and children, and perhaps that disputes and quarrels frequently happened on account of the difference of dress amongst the less opulent members of the community. This Hair Powder Act is not

* This part of the Act was repealed by the 1 Jac. i. c. 25.

a *sumptuary* law : although there might have been very equitable grounds for making it so, on account of the useless expenditure of grain, in manufacturing the starch, of which it is composed. But this could not have been in the contemplation of our present legislature, as it has particularly described the *hair-powder*, for the wearing of which the stamped licence is to be procured, as being *made of any materials whatsoever*.

The right of wearing hair powder is not pretended to be taken away by this Act, for the revenue, the increase of which is the object of the Act, is made to arise out of the exercise of the right. The new law then consists in the obligation of purchasing or paying in future for the right of doing an action, which social nature before enabled every person indifferently to do. But all use of all hair-powder is not thus to be paid for : for by the second article of the Act, it is expressly declared, that *every sort or composition of powder, which shall be used or worn by any person, as an article of his or her dress, by whatever name the same shall be distinguished, shall be deemed hair powder within the intent and meaning of this Act*. No licence therefore is required by this Act for refreshing or cooling a heated head by the application of hair-powder, and combing it out before the person appears in public. Grease or other moisture may still be lawfully dried up by the use of hair-powder, without taking out a certificate. A man or woman, who finds comfort and relief in applying hair-powder to their heads or elsewhere, would not I presume be liable

to the penalties of this Act for doing it without a licence, provided the powdered part be concealed by a peruke, cap, or other covering: for it would not then be an *article of his or her dress*: and we have seen, that beyond this, the intent and meaning of this Act do not extend. A person therefore may still without paying a guinea for a certificate, by common law continue to use hair-powder for all purposes indefinitely, excepting that of *making it an article of his or her dress*. For it is a general rule of law, That * “when there is a particular remedy given “by an Act of Parliament in a particular case, the “Act shall not be extended to overthrow or alter “the common law, but only in those particular “cases.” Here then evidently the particular case is confined to the *article of dress*. It is also laid down as another general rule of law, That † “when an Act of Parliament alters the common law, the meaning shall not be strained “beyond the words.”

Upon the same principles then must we speak of all the regulations, which the Act directs or enjoins, which depend upon and refer to the use of hair-powder as an *article of dress*. Such are the previous entry of one's name quality and place of abode required by the first and tenth article of the Act, the making out lists of the persons liable to the Act, and affixing them to the church-door, or market-cross, as directed by

* Cart. 36. Arg. in case of Cornwallis and Hood, cites 11 Rep. 59. Dr. Foster's case, Hob. 298, Slade v. Drake.

† Vaughan 179. Tren. 16. Car. 2. Bedel v. Constable.

the sixteenth article : the penalties of 20*l.* and 30*l.* imposed by the seventeenth article, and generally whatever is required to be done by this Act, which before was not obligatory upon British subjects, whilst resident within this realm.

It will be readily admitted, that the penalties imposed by the act, can only fall upon such persons as are liable to it, or upon whom the act induces its effects. This is so notoriously palpable, that the thirty-three last articles of the act apply only and operate upon those persons, whom the first article renders liable to the act; and those are such, *as shall use or wear any powder commonly called hair-powder*; and by the second article, this *use or wearing* is confined to *an article of dress*. Who then are liable to the Act?

All those, who are excepted out of it are evidently not affected by its operation: they may therefore continue by common law to decorate their persons with this *agrément* of dress, and indulge as freely in the use of *hair-powder*, as they did before the act passed; no alteration of the common law in any way respecting the use of hair-powder having taken effect upon them. They are clearly kept without all the positive direct and immediate, as well as the relative indirect and remote effects of the act. No consequence of the act can fall either upon the excepted persons, or upon those, who shall *not wear or use hair-powder as an article of dress*. The act is in substance an optional *poll-tax*: the provisions and penalties of the act therefore can only affect

B

those,

those, who voluntarily submit to the tax. This voluntary submission arises from two causes; viz. either from the zeal of the powdered approver of those measures of government, which have created the necessity of increasing the revenue, or from the comfort satisfaction or vanity of the wearers of hair-powder. But I enter not into the motives of the contributors to the tax, nor do I undertake to examine how judicious or politic it may be to divide the community into distinct bodies, marked by what possibly may become a very invidious and dangerous discrimination.

From what has been said, it plainly appears, that any person abstaining from the use of hair-powder as an article of dress is not obliged by this act to give in any account or return of the name quality or place of abode either of himself or of any person within or without his house, connected with or dependent or not upon him: he cannot be liable or subject to any penalty imposed by the act, for he cannot be even remotely affected by any consequence of the act.

Neither the policy of the law, nor the accuracy in drawing the act, enter into the scope of my enquiry. I ought not however totally to pass over unnoticed, that the servants of every part of the royal family are certainly not less able to contribute to the increase of the public revenue, from which in fact their salaries arise, than the servants of the other nobility or gentry. Nor does an armed yeoman or volunteer
appear

appear much more strongly entitled to be eased of the payment of his annual guinea, than a maimed and disabled officer, who has sacrificed the flower of his life in the service of his country and through necessity has retired upon half pay. It would have been decorous and consistent with the dignity of this nation, to have permitted the foreign ambassadors (who to many purposes are presumed resident in their respective sovereigns dominions) to continue the custom of their country without contributing their guineas to the supplies of another state. It would have been characteristic of the generosity of the British nation to have entered into the feelings of many thousand French refugees, to whom from the cradle the use of hair-powder has been as inseparable as that of linen. Besides the mortifying inability of purchasing a certificate, the unfortunate exile is humbled by the necessity of altering his appearance and foregoing an innocent comfort: he is moreover grievously distressed by the cruel alternative, either of violating the law and exposing himself to be imprisoned for non-payment of the penalties of the act, or of giving the invidious appearance of government's supplying eleemosynary aliens with the means of indulging idle vanity, whilst their own poor are starving for the want of necessaries. An express exception of these unfortunate victims to their attachment to royalty or religion would have been an honourable and not costly attention to the delicacy of their feelings. Had they not been noticed in the act, they might have supposed themselves not implicated in the observance of it. And much

as the act tends to foster and encourage common informers, I trust the grace of British humanity would have secured the innocent breakers of the law against its penal effects. But the provision of the eighteenth article demonstrates, that their case was fully in the contemplation of the legislature, and takes away the possibility of their pleading ignorance of the law: for they are required to take out their certificate before the expiration of 21 days next after their arrival from foreign parts. And I have before shewn, that special promulgation of an act of parliament is not required to make it binding.

Besides the persons specially excepted by the act, and those who choose not to be brought under any of its effects, by abstaining from the use of hair-powder, it is to be presumed, that another very numerous class of individuals is clearly kept out of the act by the operation of the common law of the land: for as we before observed, the common law is only altered by the statute law in the particular cases mentioned in the statute. These are generally all such persons as are by common law under disability, or not at their own disposal, *non sui juris*; such as married women infants or minors under the age of 21 years and idiots. It is evident, that this statute cannot alter the operation of the common law upon all these persons, but by introducing some new law, which either expressly abrogates or substantially annuls the common law. As this class of people *non sui juris* is by far the most numerous, as comprehending the whole

whole of the population of the country under the age of 21 years, it becomes highly important to state both their active and passive rights duties and obligations by *common law*. No man, who knows the extent of the sovereign power of a state will for a moment hesitate in allowing, that the British parliament may, if it think proper, give separate and independent legal rights to married women, or as they are more technically termed *femes covert*, and anticipate or forward the legal abilities rights and responsibility of minors. But if that same person know any thing of the constitution and laws of England, he will not be ignorant, that such material land-marks in the municipal laws of the country cannot be removed, but by an exprefs clear and unequivocal written law or act of parliament. Two points then arise for our immediate discussion: the first is, What these persons are entitled to or exempted from, by the common law? Secondly, What they are made subject and liable to by this statute?

* “By marriage the husband and wife are
 “one person in law; that is, the very being or
 “legal existence of the woman is suspended
 “during the marriage, or at least is incorpo-
 “rated and consolidated into that of the hus-
 “band.” Although a wife cannot be sued
 without making the husband a defendant †
 (unless he be attainted or civilly dead ‡), yet is
 he not obliged to pay any debts or demands

* Black, Com. lib. i. ch. 15.

† 1 Leon. 312.

‡ Co. Lit. 133.

upon his wife, but for necessaries, with which the law requires him to provide her *. The late lord chief justice De Grey, in the case of *Hatchett & al. v. Baddeley*, † expressly said, that a *feme covert* (even having eloped from her husband, as was the case of Mrs. Baddeley) *can neither sue nor be sued alone. This is the general law.* We shall presently examine how far this act bears upon or alters the *general law*. Truly however did judge Blackstone observe ‡, “ That “ even the disabilities, which the wife lies under “ are for the most part intended for her protection and benefit. So great a favorite is the “ female sex of the laws of England.”

Highly as the law of England favours married women, yet coverture is still less protected by it, than infancy or nonage. “ Infants,” says Blackstone §, “ have various privileges and “ various disabilities; but their very disabilities “ are privileges, in order to secure them from “ hurting themselves by their own improvident “ acts.” The law therefore is peculiarly favorable to them in preserving their rights, enabling them in their suits, assisting them in their pleadings, excusing their laches, and protecting their persons ||. By the common law of England the ages of male and female infants are different for different purposes. A male at the

* These points were resolved upon in the case of Manby and Scott, by all the judges of England in the exchequer-chamber, after the case had been argued seven times in the king's bench. Sid. 120. Salkeld 118.

† Black. Rep. 1081.

‡ Com. lib. i. ch. 15.

§ Com. lib. i. ch. 17.

|| 2 Rolls. Rep. 18. Hold-

ford and Platt.

age of 12 years may take the oath of allegiance ; at 14 he may marry and choose his own guardian, and if his discretion be actually proved, he may validly dispose of his personal property by will : at 17 he may be executor, and at 21 is completely *sui juris*, at his own disposal. The female may be betrothed or given in marriage even at the age of 7 years : at 9 she becomes entitled to dower : at 12 she may lawfully marry, and if her discretion be proved, may by will bequeath her personal estate ; at 14 she may choose her guardian ; at 17 be an executrix, and at 21 she becomes completely *sui juris*, her own mistress. Both of them are disabled by common law during their nonage or legal minority, which lasts till the age of 21, either to sue or be sued in their own names. An infant cannot be sued, but under the protection and joining the name of his or her guardian ; but may sue either by guardian or *prochein amy*, the next friend. In point of capacity to sue or be sued in their own names, minors are equally disabled in every stage from the cradle to the age of 21.

In criminal cases an infant at the age of 14 is generally supposed by the law to have so much discretion, as to be sensible of the difference between moral good and evil, and may therefore be capitally punished for capital offences. Under 7 years he is not presumed to have attained sufficient use of reason, to know the malice of any offence. But Sir Matthew

* Co. Lit. 135.

Hale gives an instance of a girl murdering her mistress, and being executed for it at the age of 13; and of a boy only 10 years old being hanged for murdering his companion: proofs appearing in both, that they had full discernment of the heinousness of the crimes they had committed. There is however a wide difference between an infant being liable to corporal or even capital punishment for personal delinquency, when he has arrived at full moral discretion, and being subjected under the condition of an indifferent action, to contribute to the national revenue from property, of which the law allows him only the use *, for procuring necessaries and an education suitable to his station in life. Lord Hardwicke said, in the case of Brook executor of Hobart v. Galley, † “That infants are under a disability of contracting debts, except for bare necessaries: and even this exemption is merely to prevent them from perishing.” It was also determined in 1785 by Lord Mansfield, ‡ that an action would not lie against a minor for a promissory note given by him for board lodging and education.

If then by common law *femes covert* and infants cannot be sued, but may legally plead their coverture or nonage in bar of any action, that may be brought against them for money, we must examine, whether they can be sued without a special provision for that purpose in

* Co. Lit. 172.

† 2 Ath. 35. Vid. also Cro. Jac. 494. Whittingham and Hill, and 1 Rol. Ab. 729.

‡ 1 Term Rep. 42. Trueman and Hurst.

popular actions brought upon penal statutes: for if by *common law* they cannot be sued and convicted, then must there be something contained in the statute, which operates in bar or abatement of their plea of coverture or nonage, and which induces upon the wife and infant a responsibility and ability of being sued, which for their safety and protection the common law had hitherto shielded them from. Now so far from the act's containing any express provision, to alter, or take away the unliability and non-responsibility of *femes covert* and infants, it is notorious, that there is not one word to be found in any of thirty-four articles of it, which has even an indirect or remote reference either to the case of coverture or nonage; which evidently proves, that wives and infants were not even in the contemplation of the framers of this act.

From what has been said, I hope, it sufficiently appears, that the act imposes its obligations upon no one, who is not thereby rendered liable to the penalties thereof, which are fine or imprisonment. The proof therefore, that *feme coverts* and infants are not liable to the penalties of the act, will conclusively determine them not to be obliged by it. For these propositions are clearly convertible. A person not liable to the penalties is not included in the act: a person not included in the act is not liable to the penalties of the act. Every general rule of law is intimately founded in the common law; or rather the common law is founded upon the maxims, which form these rules. Every case
therefore

therefore that can be brought under any such rule, must of course be a case of common law ; and we have before seen, that the common law cannot be altered but by an express statute. Nor will it avail to allege some exceptions from a general rule ; for the very exceptions from the rule prove the rule in all cases not excepted out of it. *Exceptio probat regulam*. Let us then see by what general rules or maxims of law both wives and infants are screened from these penalties of the Hair Powder Act.

It was holden by the Court of Common Pleas, in the case of *Shinler v. Roberts*, 12 Geo. II. * That the penalty is a *debt* due to the common informer. This also appears by the defendant's being allowed in such a popular action to plead *nil debet*, which he could not do, if the action were not brought for debt, as is evident. But it is clear, that no such action will lie against a person, who cannot have contracted the debt or rendered him or herself liable to the penalty. Now it is a general rule of our common law, that no *feme covert* or infant can contract any debt but for necessities, as we have before seen : and upon their incapacity to contract debt, is the form of pleading grounded, which hinders them from being sued alone. There is not in the whole statute a word, by which any degree of liability or responsibility can be annexed to a husband parent or guardian, for their wives children or wards using hair-powder without purchasing a certificate : nor in case they should

* Buller's Nisi Prius, 197.

be found guilty of having violated the statute, could the conviction be made out against them in the form prescribed by the statute; and if the conviction cannot be made out according to the direction of this statute, it must fall, for the common law gives no action against any person for using hair-powder.

It is generally said, that statutes, which give corporal punishments shall not extend to infants. And Sir Robert Brooke, one of our earliest and most authentic digesters of the laws of England, says, * “ An infant is found a disseisor, for which he ought to be imprisoned; he shall be pardoned, said the court, *because he is an infant.*” He quotes the Book of Assizes (43 Ass. 45) which goes farther in saying, that the infant on account of his nonage shall not only be pardoned from imprisonment, but also from the amerciamment, *pur ceo que avis fuit a les justic que le defendant ci fuit deins age, l’enpresonment & l’amerement fuer pard, &c.* From this general rule, *that an infant shall not be amerced*, he is not bounden by the law to find pledges: and our books lay it down generally, that if he be amerced, he shall be pardoned of course.

Although some of the books state it as a rule, that an infant is bounden by every statute law, if he be not excepted out of it: yet we find this rule very solidly discussed in Plowden’s Report of the famous case upon fines, of Stowell and Zouche, where he clearly shews, that in

* Bro. Ab. Imprif. 75.

some cases general statutes do not extend to infants, though in others they do. He particularly instances the statute of W. 2. c. 25. by which according to the letter every disseisor shall be imprisoned for a year, and yet by the determinations of our courts the act did not comprise disseisors under the age of twenty-one. Yet he holds, that infants shall be bounden by the statute of *Cessavit* and *Waste* and such like, though the statutes be general ; for the cesser is an injury to the lord, and the waste is an injury to the lessor, and the infant himself acquires the estate. It is certainly reasonable, that the nonage of a trespasser shall not operate damage to a third person. This sound and learned Reporter particularly says, “ It was said, that in the cases of the before mentioned statutes, where infants within the general letter were adjudged out of it by the sense, there the judges, who judged took the common law, which was the matter for construction for their guide, the reason of which they followed as closely as they could.” Now to follow the reason of the common law in interpreting this Hair Powder Act, we must admit, that wives and infants may use hair powder by common law : they cannot contract debt by common law : they cannot be sued alone by common law : nor are they enabled by common law to enjoy the means, by which alone they can comply with the statute : for by common law, they are only entitled to necessaries : they are in fact rendered by common law incapable of disposing of money to the purposes of this Act : they cannot then be within its purview : for although

the Act do not suppose the actual possession of one guinea at any one time in any one individual, yet to become efficient it must pre-suppose the possession and free disposal of a guinea in all those, upon whom it intended to operate : but as neither a wife nor an infant can of themselves command the disposal of any money for the purposes of this Act, it follows clearly, that they are not within the intent or provision of the Act.

Wherever general statutes annex penalties pains or corporal punishments to criminal actions wrongs and injuries done to others, and infants are by their discretion capable of fully discerning the guilt or malice of these actions, there is no reason for their being taken out of the statute ; for in these cases *malitia supplet aetatem* : their malice makes up for their want of age. There are also other general acts of parliament, which bind infants during their nonage, though they be not expressly named in the acts: where for instance they possess land or houses, for which rents tenures or services are to be paid and performed. Here there is a fund to answer the payment : for the land descends with its incumbrances, *transit terra cum onere*. Yet although in such case an adult might be imprisoned for refusing payment of money issuing out of land, yet a minor under twenty-one would not be so, though his lands might be equally liable.

Upon this principle was it, that by the 7 and 8 of Will. III. c. 18, certain duties upon houses were

were granted, to which of course some minors, as owners of houses, under the age of 21 were liable. Yet the legislators of that day were attentive to the common law, which shielded infants from the remedies, by which they enforced the tax against adults, and they were providently cautious to give these remedies against such persons, as were not secured from them by the common law, which in the protection and privileges of infants they meant not to alter. They therefore enacted, That “where any person or
 “persons chargeable with any rate or assessments
 “by this act imposed, shall be under the age
 “of twenty-one years, in every such case, the
 “parents guardians or tutors of such infants
 “respectively upon default of payment by such
 “infants, shall be and are hereby made liable
 “to, and charged with the payments, which
 “such infant ought to have made; and if such
 “parents guardians or tutors shall neglect or
 “refuse to pay as aforesaid, it shall and may
 “be lawful to proceed against them in like
 “manner as against any other person or persons
 “making default of payment, as herein before
 “is mentioned: and all parents, guardians, and
 “tutors making payment as aforesaid, shall be
 “allowed all and every the sums paid for such
 “infants upon his or their accounts.”

Will any man contend, if this proviso had not been inserted in the Act of William, that parents guardians or tutors would have been liable to the remedies of the Act for the non-payment of their children or ward's house-duties? Nothing however could more emphatically have
 recognized

recognized the sacred privileges of infants; or more significantly have declared, that it was not the intention of the Legislature to alter or change the common law, which disables infants from being sued in popular actions upon penal statutes. But since there is no such clause or provision in the Hair Powder Act, I presume no man will seriously pretend by a loose and unwarrantable interpretation of this penal law to sweep away the sacred and hitherto revered rights of *femes covert* and infants, to which our common law has ever afforded so peculiar and tutelary a protection. It is strikingly evident, that no alteration has taken place in the common law, which renders infants incapable of being sued or proceeded against upon penal statutes, since the days of king William down to those of our present Sovereign, as we find that the 24th of Geo. III. c. 38, which regulates the house-tax, repeats *verbatim* the proviso contained in the Act of William above cited.

Of the origin nature and fatal consequences of the first and last poll-tax levied in England no man in the least conversant with the history of this country is ignorant. We learn from the records in the Tower of London (Vid. Sir R. Cotton's abridgment thereof 188 & 9) that at the Parliament-holden at Northampton in the 4th year of the reign of king Richard II. (A.D. 1380) " The King declared, that the especial cause of
" the Parliament was, for that the King in setting forth the duke of Buckingham with a
" great army of men into France, for entering
" this voyage into Scotland, and for de-
" fending

“ fending and other places beyond the seas
 “ had not only defrayed all that, which they granted
 “ ed to him in the last parliament, but also was
 “ therefore enforced for making of exchanges
 “ and shifts, to lay in manner his whole jewels to
 “ gage : all which to them was not unknown.

“ He willeth them to consider the same, and
 “ how far the King was bound by fundry means
 “ now to maintain not only the same charge
 “ now begun, but also to make ready certain
 “ gallies and to keep the sea, which were a matter
 “ impossible for any Christian Prince to accomplish
 “ of himself without aid : about which
 “ and with the circumstances thereunto, he
 “ willeth them to consult and speedily to give
 “ answer.

“ The Chancellor then willed the Commons
 “ to depart to their lodging and return next
 “ morning unto the new within the
 “ same priory, there to consult and to forget all
 “ manner of rancour and malice.

“ After that the Commons had for one day
 “ consulted, they came into the parliament into
 “ the King’s presence, where Sir John Olduburgh,
 “ Knight, the Speaker desired a more
 “ fuller declaration of the King’s necessity and
 “ what sum total he would require therein, requiring
 “ due consideration of the Commons
 “ poor estate being fundry ways greatly impoverished.

“ Whereupon was delivered unto them by the
 “ King’s

“ King’s great Officers and Council a schedule
 “ containing divers particular charges amount-
 “ ing to the sum of one hundred and fifty thou-
 “ sand pounds.

“ The Commons after came before the Lords
 “ requiring a moderation of the same sum and
 “ that it would please them to consult how the
 “ same might be levied.

“ After a long debate betwixt the Lords and
 “ Commons for the levying of this sum, as by
 “ fundry particular devices doth there appear,
 “ the Commons offered to give an aid, so as
 “ the Clergy, who had the third part of the
 “ realm would thereof pay one third part, which
 “ was fifty thousand marks, and the Commons
 “ one hundred thousand marks.

“ The Clergy answered, that they were not
 “ to grant any aid by Parliament, but of their
 “ free wills, and therefore willed the Commons
 “ to do their duty and they would do their own.

“ Hereupon the Lords and Commons granted
 “ to the King of every person being man or
 “ woman passing the age of fifteen years, and
 “ being no beggar twelve pence to be levied of
 “ every person of every parish according to
 “ their estate: so as the rich doth bear with the
 “ poor, and that the richest for him and his wife
 “ be not set above twenty shillings, and the most
 “ poor for him and his wife, no less than one
 “ groat.”

Many

Many useful observations are to be collected from this authentic account of the first poll-tax ever imposed upon Englishmen. In the first place we may admire (though we do not imitate) the honesty and faithful attention of the Commons to the interests of their constituents, and their firmness in resisting the extravagant demands of the ministers, by retrenching one third, viz. granting only 150000 marks, instead of 150000 pounds as demanded. Secondly we find only beggars exempted from contributing to the necessities of the State and the Clergy paying their full quota, unlike to the exemptions contained in the Hair Powder Act, in favour of persons evidently of a different description from that of beggars. Thirdly we perceive the Legislature of that day more attentive to the common law, than ours seems to have been, by specifying the particular age of fifteen for payment of the tax by infants, and exempting *femes covert* as well as all under fifteen from the payment. In the simplicity of these early days of taxation, when finance was not reduced to a regular and refined system, all the modern cautions provisoes and powers to collectors and commissioners entered not into the contemplation of our blunt and honest ancestors. They had not it seems provided for the manner, in which the age of liability to the tax should be proved: and the brutal method, which a collector (a placeman of those days) took to ascertain the age of a girl who pleaded her nonage, was the immediate pretext for raising that horrible insurrection, which was headed by Wat Tyler the insulted girl's father, who first took summary vengeance upon the collector

collector of the odious tax, and then exposed the very being of the State to annihilation. Although the abuse of this grievance were the pretence, yet the real cause of the insurrection was the discontent of the people with the arrogance extravagance and imperiousness of the Minister of that day; as Speed expresses it (p.733) "*The extream hatred borne by the people to John Duke of Lancaster and the discontent of the people at an extraordinary tax levied per poll.*" An awful warning to future Financiers to consult the feelings of the people in imposing the taxes, which their own folly and wickedness may have rendered necessary.

It would be endless to go into all the proofs, that may be urged in favour of nonage, to shew that general penal statutes bind not infants, when they impose pecuniary penalties or corporal punishments. The forms of pleading disclose most unequivocally the spirit and operation of the common law, to which they are adapted. And by these we find, that the common law presumes no personal *laches* (neglect slackness remissness omission or fault) in the infant, by which he may prejudice himself. For it is expressly said in the case of Holford and Platt, * "But *posito*, that judgment were given against him (an infant) upon *laches* he may have a writ of error, and allege, that he was an infant and that it was given against him by default, and the other shall not plead *in nullo est erratum* (i. e. *he is not guilty of the laches*), but the issue

* Cro. Jac. 466.

“shall be upon the nonage.” This is as much as to say, that as by common law the infant is presumed incapable of offending, the fact of his negligence shall not be gone into, but only the fact of his infancy, which by common law created his inability to be guilty of the laches.

It is enacted by the stat. of Elizabeth (18. c. 5.) *to redress disorders in common informers* “That every informer upon any penal statute, shall exhibit his suit in his own proper person : and we find, that it has been determined upon this statute, * that therefore an infant cannot be a common informer, because he must sue by guardian. But if the active inability of suing alone, which the *common law* has induced upon an infant shall disable him against his benefit from recovering a sum of money in a † *qui tam* or popular action ; how much more reasonable is it, that the passive inability of being sued alone, which the *common law* has favoured him with, shall secure him from being subjected to loss costs and corporal punishment.

Most of the cases of infants, which I have referred to respecting *nonage*, from parity of reasoning apply also to *femes covert* in respect of their coverture. In fact the leading reason, why such general poll-taxes or personal levies cannot

* Maggs and Ellis M. 25. Geo. II. Buller's *Nisi Prius* 196.

† So called because in such actions upon penal statutes, where the penalty to be recovered is divisible between the King and the common informer, the plaintiff in the action (who is the informer) prosecutes as well for the King as for himself, *tam pro rege, quam pro se*.

bind wives or infants, is their inability by common law to possess a fund or the means of complying with the act, which requires the contribution : and this principle seems to have been more expressly recognised in favour of wives, than of infants. In the case of *Corbet and Poelnitz* * it was said, by lord Mansfield, that it was a general rule of positive law, that a married woman can have no property “ real or personal. “ Her contracts are entirely and universally “ void ; for her contracts even for necessaries are “ the contracts of her husband. She cannot be “ sued or be taken in execution. This is the “ general rule. But then it has been properly “ said, that as the times alter, new customs and “ new manners arise : these occasion exceptions, “ and justice and convenience require different “ applications of these exceptions within the “ principles of the general rule.” He then adds, “ In modern days a new mode of proceeding has been introduced, and deeds have “ been allowed, under which a married woman “ assumes the appearance of a *feme sole*, and is “ to all intents and purposes capacitated to act “ as such. In the ancient law there was no idea “ of a separate maintenance : but when it was “ established, what said the Courts ? That the “ husband shall not be liable even for necessaries : “ and they said so because convenience and “ justice required it.” The determination of the Court in this case was, *That where a woman has a separate estate, and acts and receives credit as a feme sole, she shall be liable as such.* It appears

* Term Rep. i. vol. 8. 9.

then clear, that a woman of this description, who in fact ceases to be a *feme covert* or protected by a husband would be as liable to the penalties of the *Hair Powder Act*, as if she were completely *sui juris* or her own mistress in every thing. For as Sir William Ashurst most pertinently observed in that case, “ Her incapacity arising from want of property being once removed she is in my opinion suable for all.” The admission of a wife so separated and enjoying a fund at her own disposal being subject to this Act is a conclusive argument against wives strictly under coverture being included in the Act.

The persons, who are expressly exempted from contributing towards the revenue in this extraordinary exigency are enumerated in the III, IV, V & VII Articles of the Act. It is however unaccountable, that the indulgence is not carried to a very numerous set of men, who appear more peculiarly entitled to exemption than any other description of non-contributors to the revenue. These are all such subjects of France as are commissioned or enlist as soldiers under certain restrictions mentioned in the 34th of his present Majesty (c. xliii). These evidently make no part of the British army. If it be objected, that such an exemption would have been useless, as the very title of the Act describes these persons as enlisting or commissioned *to serve on the Continent of Europe*, to no part of which the jurisdiction of the British Parliament runs; it must be remembered, that by the 2d Article of that Act any of these troops may be landed in

in Great Britain, though by the 3d Article it is provided that their number at any one time shall not exceed 5000: and that by the 18th Article of the Hair Powder Act all persons shall be required to obtain their certificates in pursuance of this Act, before the expiration of twenty-one days next after their arrival into this kingdom from foreign parts.

If to the excepted persons, we add all those who voluntarily choose to keep themselves out of the effects and operation of the Act by abstaining from the use of hair-powder, as an article of dress, and all those married women or minors upon whom it operates not, the number of contributors to this levy or tax will be very considerably diminished. It is in fact, as I said before, no more than a voluntary subscription towards the expences of the war. The elegant appearance of a powdered head is to be the envied badge of the favoured subscribers; the inquisitorial jurisdiction of the commissioners, and the liability to forfeitures and imprisonment become the purchased remuneration of their forwardness and zeal in contributing to the increase of the revenue: and their meritorious services to the state are emblazoned upon their church-door or market-cross.

In tenderness to the feelings of many, whom their slender means disabled from purchasing the enviable preference; and for effectuating the intentions of the Act, I earnestly suggest, that it be recommended to the sympathy of the opulent supporters of the measures, for which

the supplies are necessary to make up the deficiency arising from the indigence of many well-wishers to the cause. Let his Grace of Richmond indulge his generous feelings in purchasing certificates for all the halfpay officers, who may wish to continue the use of hair-powder. The Marquis of Buckingham will ensure the prayers of many powerful advocates with the Deity, by contributing three thousand guineas for so many licences for French Abbés to powder their heads. Mr. Jenkinson will cheerfully distribute at his own expence certificates through the powdered ranks of the emigrant army before he leads them triumphant to Paris. And his gallant Grace of Queensberry will be transported with the hitherto untried pleasure of lavishing upon the Gallic fair, and perhaps upon some British nymphs these desirable warrants to powder their wanton tresses in defiance of the grim threats of commissioners justices and gaolers.

N. B. A cautionary opinion upon the operation of the XVIIth Article of this Act has appeared from the commissioners of the stamp duties, in which they threaten with prosecution every person that shall not take out a certificate for having worn hair-powder between the 5th day of May and the 5th day of June. But words cannot more expressly declare, that the penalty of the Act is only given against such persons *as shall use or wear hair-powder as an article of his or her dress after the expiration of one calendar month after the fifth day of May 1795.* Now the day on which one calendar month after

after the 5th of May 1795 will expire, will be the *5th day of June next*: and from that day only will an uncertificated wearer of powder be liable to the penalty. And no power is given by the Act to the commissioners to direct prosecutions against such defaulters but for the recovery of the penalty. These respectable commissioners appear in this premature earnest of their future zeal to be as little conversant with the laws of the land, as they are anxious to secure their fellow citizens from the pestilential swarms of spies and common informers.

A B S T R A C T

OF AN

A C T,

Passed in the 35th Year of King GEORGE III.

INTITULED

AN ACT FOR GRANTING TO HIS MAJESTY, A DUTY ON
CERTIFICATES ISSUED FOR USING

H A I R P O W D E R.

Which received the Royal Assent on the 30th of April 1795.

ART. I. enacts towards raising the necessary supplies to defray his Majesty's public expences, and making such permanent addition to the public revenue, as shall be adequate to the increased charge occasioned by any loan to be raised, or stock to be created, by virtue of any act or acts for that purpose to be passed in this session of parliament, That from and after the fifth day of May one thousand seven hundred and ninety-five, there shall be raised, levied, collected, and paid, throughout the kingdom
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of Great Britain, unto and for the use of his Majesty his heirs and successors, the stamp duty following ; *viz.* that every person *who shall use or wear any powder* commonly called Hair Powder, of whatever materials the same shall be made, shall previously enter his or her name and place of abode, and annually take out a certificate thereof, in the manner herein mentioned ; and that upon every piece of vellum or parchment, or sheet or piece of paper, upon which any certificate issued to any such person shall be ingrossed, written, or printed, there shall be charged a stamp duty of one pound and one shilling.

II. That every sort or composition of powder which shall be used or worn by any person *as an article of his or her dress*, under whatever name, shall be deemed hair-powder within the intent of the act.

III. That nothing in this act shall extend to any of the royal family, or to any of the immediate servants of his Majesty, or any of the royal family, serving in any of the capacities described in or by an act passed in the seventeenth year of his present Majesty's reign.

IV. That nothing in this act contained shall extend, or be construed to extend, to charge with the duty hereby imposed any clergyman not possessed of an annual income of one hundred pounds, or upwards, whether arising from ecclesiastical preferment or otherwise ; nor any subaltern or non-commissioned officer, or private man, belonging to any regiment in the army, artillery, militia,

militia, division of marines, corps of engineers, or fencible corps ; nor any officer employed in his Majesty's navy under the rank of commander.

V. Nor any officer or private man in any corps of yeomanry or volunteers, either cavalry or infantry, raised by virtue of an act of the thirty-fourth year of his Majesty's reign, intituled, *An act for encouraging and disciplining such corps or companies of men as shall voluntarily enrol themselves for the defence of their counties, towns, or coast, or for the general defence of the kingdom during the present war.*

VI. That any person who shall have more than two daughters unmarried shall be at liberty, on paying the duty by this act imposed for two of the number, to receive a certificate or certificates in the manner provided by this act for the whole number, of whom he shall give an account ; and that neither the person giving such account, or any of the persons included in such certificate, shall in such case be liable to any of the penalties imposed by this act by reason of the duty not being paid for the whole number.

VII. That this act extends not to any preacher or preachers of any congregation of dissenters, or any person dissenting from the church of England in holy orders, or pretended holy orders, who now is, or at any time hereafter shall be entitled to the benefit of the statute, made in the first year of the reign of the late king William and queen Mary, intituled, *An act for exempting their Majesties protestant subjects, dissent-*
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ing from the church of England, from the penalties of certain laws; or of the statute, made in the nineteenth year of the reign of his present Majesty, intituled, An act for the further relief of protestant dissenting ministers and schoolmasters; or of the statute, made in the thirty-first year of the reign of his present Majesty, intituled, An act to relieve, upon conditions, and under restrictions, the persons therein described, from certain penalties and disabilities to which papists, or persons professing the popish religion, are by law subject; and who shall not be possessed of an annual income of one hundred pounds or upwards, however arising.

VIII. Commits the duty to the management of the commissioners for stamps.

IX. Enables the commissioners to appoint officers within certain limits for receipts of names, &c. and the head distributors to appoint them without such limits; and directs that the offices shall be kept open at certain times, &c. which are to be advertised.

X. That, from and after the fifth day of May one thousand seven hundred and ninety-five, or within the space of one calendar month next ensuing, *every person liable to the duty by this act imposed, shall make such entry, as aforesaid, by delivering, or causing to be delivered, according to the directions of this act, into the head office of stamps, or such other office as the said commissioners shall appoint within the limits aforesaid, or into the office of the head distributors of stamps, or other deputies, or other persons*

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persons appointed to receive the same, an account in writing, containing his or her name and place of abode, and whether he or she be a house-keeper, or one of the family, or a lodger, inmate, apprentice, or servant, abiding in the house of any person, with the day, month, and year, of delivering in the same; and such commissioners, or their distributors respectively, or their respective deputies, or such other person or persons who shall be appointed to receive such accounts at the office or place of delivery, shall thereupon, and upon payment of the said duty, issue a certificate, made out in the name of the proper officer, and stamped, to denote the duty by this act imposed, in the form directed by the act.

XI. That every certificate issued by virtue of this act shall cease and determine on the fifth day of April in the year for which the same shall be issued; and every certificate taken out after the fifty day of May one thousand seven hundred and ninety-five, or within one calendar month afterwards, for the year one thousand seven hundred and ninety-five, or in any subsequent year, for the year in which the same shall be issued, shall be in force untill and upon the fifth day of April then next following, and shall commence from the date thereof; and every certificate taken out for any year subsequent to the year in which the same shall be issued, shall commence from the fifth day of April then next ensuing, and continue in force until and upon the fifth day of April in the succeeding year.

XII. That

XII. That the names of several may be included in one account, though separate certificates must be issued for each.

XIII. That such masters or mistresses as choose to purchase certificates for their servants need not pay for fresh certificates when they change their servants.

XIV. Directs in what manner the commissioners shall prepare books containing the certificates, &c. and how they shall fill up and deliver out certificates upon payment of the duty.

XV. Enacts that the distributors shall return books of certificates to the commissioners, who shall transmit lists annually of the persons who shall have obtained certificates to the respective clerks of the peace: fixes the fees to be paid for copies of the lists, and declares that office copies of the lists shall be admitted as evidence.

XVI. That the clerk of the peace shall transmit copies of lists to the parish officer, to be affixed to the church-doors or market-cross, and poses a penalty of forty shillings for tearing them down.

XVII. That, from and after the expiration of one calendar after the fifth day of May one thousand seven hundred and ninety-five, if any person shall use or wear as an article of his or her dress any powder commonly called Hair Powder, of whatever materials the same shall be made, or by whatever other name the same shall be

be distinguished or called, without having obtained a certificate from the proper office of stamps in the county, riding, division, shire, stewardry, or place, where such person shall reside, in pursuance and according to the directions of this act, every such person shall, for every such offence, forfeit and pay the sum of twenty pounds, which shall be sued for and recovered in the county, riding, division, shire, stewardry, or place where such offence shall be; and if any person having obtained any such certificate shall afterwards sell, transfer, assign, or deliver the same; to any other person, with intent that such certificate shall be fraudulently made use of to the diminution of his Majesty's revenue granted by this Act, or if any person shall fraudulently use any such certificate in order to evade the payment of the said duty by this Act imposed, every such person shall, for every such offence, forfeit and pay the sum of thirty pounds.

XVIII. That no foreigner shall be liable to the tax till he has been 21 days within the kingdom.

XIX. That the respective clerks of the peace, town clerks, sheriffs depute, and steward clerks, or their respective deputies, or other officers aforesaid, who are hereby respectively required to execute this Act in any of the particulars herein mentioned, and who shall respectively execute the same to the satisfaction of the commissioners of stamp duties for the time being, or the major part of them, shall have, and be

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entitled

entitled to such reasonable rewards, (to be paid by the said commissioner, of stamp duties, out of any duties arising on stamped vellum, parchment, or paper), as the commissioners of his Majesty's treasury, or any three or more of them, or the lord high treasurer, for the time being, shall authorise and direct, for their care and trouble in and about the execution of this Act, over and above their respective expences in the same, to be paid in the like manner; and that such reasonable reward as the said commissioners of stamp duties shall from time to time authorise, shall also be given and allowed to the respective churchwardens, overseers of the poor, constables, tythingmen, or other peace officers, for any thing done by them respectively in the execution of this Act, to be paid by the clerks of the peace, town clerks, sheriffs depute, steward clerks, or their deputies, or other officers aforesaid, respectively employing such constables, tythingmen, or other peace officers, to be charged in their accounts with the said commissioners of stamp duties.

XX. That if any officer appointed to receive accounts of persons names and places of abode in pursuance of this Act, or to make out and issue certificates, or to return lists or copies thereof, shall neglect to perform his or their duty in the execution of such office, with relation to the powers and trusts vested in them respectively by this Act according to the rules and directions herein mentioned, or shall commit or suffer to be committed any undue or fraudulent practice in the execution of such office,

fice, and be thereof lawfully convicted, then such officer, or other person aforesaid, shall, for every such offence, forfeit and pay the sum of fifty pounds.

XXI. That such persons who are or shall be appointed surveyors, in pursuance of any Act or Acts of Parliament for the duties on houses and windows or lights, shall and may, within fourteen days after the fifth day of April yearly, give or leave notice to or for every occupier of any dwelling house where *any person, liable to the duties hereby imposed*, shall reside within the limits of the places for which such surveyors are to act, at his or her dwelling house, (and where such dwelling houses shall be divided into different stories or apartments, and occupied distinctly by several persons, then to or for the occupier of each district, story, or apartment), to prepare and produce, within fourteen days next ensuing the day of giving such notice, a list, in writing, to the best of his or her belief, of the christian and surname of each and every person resident in such dwelling house, and liable to the duty hereby imposed, who shall, within the year ending the fifth day of April preceding such notice, to his or her knowledge, have used or worn hair-powder, and the situation or capacity of such person in respect of the family or families in such dwelling house, in which list, all persons of the family, and all apprentices, servants, lodgers, and inmates, which, to the best of his or her knowledge or belief, are respectively liable to the said duty, whether such persons, or any of them, shall have obtained certificates in pursuance of this Act or

not, shall be included; and every such occupier shall, after such notice so given or left, make out such list, and sign the same with his or her own name, and shall also, at the same time, make a declaration, signed by him or her, of the county, division, shire, stewardry, or place, where such occupier so resident shall have obtained, or doth intend to obtain, his or her certificate, and whether for himself or herself only, or for any part of his or her family or servants, and deliver the same, or cause the same to be delivered, to such surveyor; and if *any such occupier* shall neglect or refuse to make out, sign, and deliver, such list, or to make such declaration as aforesaid within the time hereinbefore limited, or shall omit any person who ought to have been included therein, in pursuance of this Act, and who shall, to his or her knowledge, have used or worn hair-powder within the period prescribed in such notice, every occupier shall, for every such offence, forfeit and pay the sum of twenty pounds, and shall be liable to prosecution for every such offence, and to be deemed guilty thereof, whether it shall appear that the person so omitted or not returned, according to the directions of this Act hath or hath not obtained for himself or herself a certificate, according to the directions of the Act, or hath or hath not been prosecuted for any such offence, and whether such person, so omitted or not returned, is or is not amenable to justice for any offence against this Act; and that the conviction of any such occupier, for any such neglect or omission, shall not be deemed to exempt the person so omitted or

not

not returned from paying the duty by this Act imposed, or from prosecution or punishment for any offence against this Act.

XXII. That surveyors transmit lists to the commissioners for taxes, who shall transmit copies to the commissioners of stamps.

XXIII. That the lists shall not comprise those as lodgers who have usual residences elsewhere in Great Britain.

XXIV. That in the first list to be made out in pursuance of this Act, the same shall be made for all the persons resident in any such dwelling house, who shall have used or worn hair-powder as aforesaid, at any time between the fifth day of May one thousand seven hundred and ninety-five, and the fifth day of April one thousand seven hundred and ninety-six.

XXV. That one moiety of all pecuniary penalties and forfeitures hereby imposed (except where other provisions are expressly made) shall (if sued for within the space of three calendar months from the time of any such penalty or forfeiture being incurred) be to his Majesty, and the other moiety thereof, with full costs of suit, to the person or persons who shall inform or sue for the same within the time aforesaid, and which shall and may be sued for in his Majesty's Court of Exchequer at Westminster for offences committed in England, and in his Majesty's Court of Exchequer at Edinburgh for offences committed in Scotland, by action of debt, bill,
plaint,

plaint, or information, wherein no effoin, privilege, wager of law, or more than one imparlance shall be allowed.

XXVI. That the penalty, if not sued for within the limited time, shall not be recoverable, except in the name of the Attorney General, &c.

XXVII. That it shall and may be lawful to and for any justice of the peace residing near the place where the offence shall be committed, to hear and determine any offence against this Act which subjects the offender to any pecuniary penalty, not exceeding twenty pounds, which said justice of the peace is hereby authorised and required upon any information exhibited, or complaint made in that behalf, within three calendar months after the offence committed, to summon the party accused, giving to each party three days notice to appear, and also the witnesses on either side, and to examine into the matter of fact, and upon proof made thereof, either by voluntary confession of the party accused, or by the oath of one or more credible witnesses or witnessess, or otherwise, as the case may require, to give judgment or sentence for the penalty or forfeiture, as in and by this Act is directed, to be divided, one moiety, thereof to the poor of the parish or place where the offence shall be committed, and the other moiety thereof to the informer or informers, and to award and issue out his warrant under his hand and seal for the levying the said penalty so adjudged, on the goods of the offender, and to
cause

cause sale to be made thereof in case they shall not be redeemed within six days, rendering to the party the overplus (if any); and where the goods of such offender cannot be found sufficient to answer the penalty, to commit such offender to prison, there to remain for any space of time not exceeding six nor less than three calendar months, unless such pecuniary penalty shall be sooner paid and satisfied; and if either party shall find himself or themselves aggrieved by the judgment of any such justice, then he or they shall or may, upon giving security to the amount of the value of such penalty and forfeiture, together with such costs as shall be awarded, in case such judgement shall be affirmed, appeal to the justices of the peace at the next general or quarter sessions for the county, riding, division, shire, stewartry, or place which shall happen after fourteen days next after such conviction shall have been made, and of which appeal reasonable notice shall be given, who are hereby empowered to summon and examine witnesses upon oath, and finally to hear and determine the same; and in case the judgement of such justice shall be affirmed, it shall be lawful for such justices to award the person or persons appealing to pay such costs occasioned by such appeal as to them shall seem meet: provided also, that in case the party accused of any offence in using or wearing hair-powder, without obtaining a certificate according to this Act, shall insist in his excuse before the justice of the peace, that he has obtained a certificate in any other county or place, and shall, on his oath or affirmation, alledge and set forth the county or place

place, and time of obtaining the same, it shall be lawful, at the request of the party accused, for the said justice of the peace to adjourn the hearing and determination of the complaint to a future time or times, to be in the discretion of the said justice, in order for the party accused to produce his certificate, or such entry or copy thereof, under the hand of the proper officer, as herein is directed; and if at the end of the time or times so to be allowed, such party shall not produce to such justice of the peace such certificate, or an entry or copy thereof as aforesaid, the said justice shall proceed to the hearing and determination of such complaint in the manner before directed: provided nevertheless, that it shall and may be lawful to and for the said justice, where he shall see cause, to mitigate and lessen any such penalties as he shall think fit, (reasonable costs and charges of the officers and informers, as well in making the discovery as in prosecuting the same, being always allowed over and above such mitigation), and so as such mitigation doth not reduce the penalties to less than the moiety to the penalties incurred over and above the said costs and charges.

XXVIII. That if any person or persons shall be summoned as a witness or witnesses to give evidence before such justice, touching any of the matters relative to this Act, and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for such neglect or refusal, to be allowed of by such justice of the peace, or appearing, shall

shall refuse to be examined on oath and give evidence before whom the prosecution shall be depending, that then every such person shall forfeit, for every such offence, the sum of forty shillings, to be levied and paid in such manner and by such means as is herein directed as to other penalties.

XXIX. That, the justice of the peace before whom any offender shall be convicted as aforesaid, shall cause the said conviction to be made out in the manner and form following, or in any other form of words to the same effect, *mutatis mutandis* (this is to say),

“ That on the day of in the
year of our Lord in the county
of *A. B.* of was
convicted before me *C. D.* one of his Majesty’s
justices of the peace for residing
near the place where the offence was committed,
for that the said *A. B.* on the day of
 now last past, did, contrary to the
form of the statute in that case made and pro-
vided, (*here state the offence against the act*) ; and I
do declare and adjudge that the said *A. B.* hath
forfeited the sum of of lawful
money of Great Britain for the offence aforesaid,
to be distributed as the law directs. Given
under my hand and seal the day of
 which conviction the
said justice shall cause to be written fairly upon
parchment, and returned to the next general or
quarter-sessions of the peace for the county,
riding, division, shire, stewartry, or place, and
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no such conviction shall be removed by *certiorari*, or other process, into any court whatsoever.

XXX. That if in any action, suit, information, or prosecution, against any person for non-payment of the duty imposed by this act, any dispute shall arise whether such person is entitled to be exempted from payment, in every such case the proof thereof shall lie upon the person claiming such exemption, who shall and may be permitted to alledge the same on his oath or affirmation, or other sufficient evidence, to be produced and shewn by him or her, any thing in this Act contained, or any law, usage, or custom, to the contrary notwithstanding; and if such person shall be a beneficed clergyman, the income arising from his benefice or benefices shall be estimated on the average amount thereof, as nearly as the same can be ascertained, computed on the period of seven years next preceding that in which such action, suit, information, or prosecution, shall be brought or commenced.

XXXI. That if any person shall counterfeit or forge, or procure to be counterfeited or forged, any stamp or mark directed or allowed to be used, or provided, made, or used, in pursuance of this Act, for the purpose of denoting the duty by this Act granted, or shall counterfeit or resemble the impression of the same, upon any vellum, parchment, or paper, with intention to defraud his Majesty, his heirs or successors, of the said duty, or shall utter, vend, sell, or expose

pose to sale, any vellum, parchment, or paper, liable to the said duty, with such counterfeit mark or impression thereupon, knowing the same to be counterfeited, or shall privately or fraudulently use any stamp directed or allowed to be used by this Act, with intent to defraud his Majesty, his heirs or successors, of the said duty; every person so offending, and being thereof lawfully convicted, shall be adjudged a felon, and shall suffer death as in cases of felony without benefit of clergy.

XXXII. That all provisoes of former Acts relating to stamp duties extend to this Act.

XXXIII. That the duties of this Act be paid to the Receiver General of the duties on stamps.

XXXIV. That the monies arising or to arise of the duty hereby granted, or so much thereof as shall be sufficient, shall be deemed an addition made to the revenue for the purpose of defraying the increased charge occasioned by any loan made, or stock created or to be created, by virtue of any act or acts passed or to be passed in this session of parliament; and that the said monies shall, during the space of ten years next ensuing, be paid into the said receipt distinctly and apart from all other branches of the public revenue; and that there shall be provided and kept in the office of the auditor of the said receipt, during the said period of ten years, a book or books in which all the monies arising from the said duty, and paid into the said receipt, shall, together with the monies arising from any other rates and
duties

duties granted in this session of Parliament for the purpose of defraying such increased charge as aforesaid, be entered separate and apart from all other monies paid or payable to his Majesty, his heirs or successors, upon any account whatever.

F I N I S .



